

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

Criminal Action No. 5:08CR46
(STAMP)

JOHNNY GRAYSON,

Defendant.

**ORDER ACCEPTING AND ADOPTING MAGISTRATE JUDGE'S
RECOMMENDATION THAT DEFENDANT'S GUILTY PLEA BE ACCEPTED**

On July 22, 2008, defendant, Johnny Grayson, appeared before United States Magistrate Judge James E. Seibert and moved this Court for permission to enter a plea of GUILTY to the information filed in this criminal action. The defendant stated that he understood that the magistrate judge is not a United States District Judge, and consented to pleading before the magistrate judge. This Court had referred the guilty plea to the magistrate judge for the purposes of administering the allocution pursuant to Federal Rule of Criminal Procedure 11, making a finding as to whether the plea was knowingly and voluntarily entered, and recommending to this Court whether the plea should be accepted.

Based upon the defendant's statements during the plea hearing and the testimony of Detective John Robinson of the Hancock County Sheriff's Department, the magistrate judge found that the defendant was competent to enter a plea, that the plea was freely and voluntarily given, that the defendant was aware of the nature of the charges against him and the consequences of the charges against

him and the consequences of his plea, and that a factual basis existed for the tendered plea. On July 23, 2008, the magistrate judge entered an order finding a factual basis for the plea and recommended that this Court accept the plea of guilty to Count One of the information. No objection to the magistrate judge's report and recommendation has been filed.

Absent objections, a de novo review of the plea proceedings conducted by the magistrate judge is not required. United States v. Osborne, 345 F.3d 281, 290 (4th Cir. 2003). Accordingly, this Court finds that the magistrate judge's recommendation should be AFFIRMED and hereby ACCEPTS the plea of GUILTY to Count One of the information.

The Court will DEFER adjudging the defendant GUILTY of the crime charged in Count One of the information until the time of sentencing. Pursuant to Federal Rule of Criminal Procedure 11(c) and United States Sentencing Guideline § 6B1.1(c), acceptance of the proposed plea agreement is DEFERRED until the Court has received and reviewed the presentence report prepared in this matter.

Pursuant to United States Sentencing Guideline § 6A1 et seq., it is hereby ORDERED that:

1. The Probation Office shall undertake a presentence investigation of Johnny Grayson and prepare a presentence report for the Court;

2. Pursuant to the amended version of Federal Rule of Criminal Procedure 32(e)(3), effective December 1, 1994, the United States Probation officer is directed not to disclose to the defendant, the defendant's counsel, or the attorney for the Government the Probation Officer's recommendation, if any, on the sentence;

3. The presentence report shall be disclosed to the defendant, defense counsel, and the Government at least thirty-five (35) days before sentencing;

4. Within fourteen (14) days after receiving the presentence report, counsel shall file and serve written sentencing statements and objections to the presentence report, if any;

5. The defendant, Johnny Grayson, shall appear before the Court as later directed by the Court for sentencing or such other disposition as may be pronounced against him;

6. The defendant shall remain in the custody of the United States Marshals Service.

IT IS SO ORDERED.

The Clerk is directed to transmit copies of this Order to counsel of record herein, the defendant, and all appropriate agencies.

DATED: July 29, 2008

/s/ Frederick P. Stamp, Jr.
FREDERICK P. STAMP, JR.
UNITED STATES DISTRICT JUDGE